

PUBLIC NOTICE

City Council to Vote on Proposed Smoking Ordinance

**City Council Meeting
Tuesday, December 14, 2004, 3:00 p.m.
City Council Chambers – City Hall
425 N. El Dorado Street, 2nd Floor**

For additional information, contact Lt. Dennis Smallie, 209-937-8409.

City Council Meeting

The City of Stockton City Council is scheduled to vote on a proposed smoking ordinance, Tuesday, December 14, 2004. The Council meeting is scheduled to begin at 3:00 p.m. Citizens may comment on this, or any other agenda item, at the time that the agenda item is being discussed or during the Citizens' Comments portion of the meeting. Citizens who wish to speak may submit a "Request to Speak" card to the City Clerk just prior to the beginning of the Council meeting. No speaker cards can be submitted after the close of the Citizens' Comments portion of the meeting.

Proposed Smoking Ordinance

AN ORDINANCE AMENDING CHAPTER 7, DIVISION 5 OF PART VI, OF THE STOCKTON MUNICIPAL CODE BY REPEALING DIVISION 5 OF PART VI, SECTIONS 7-150 THROUGH 7-162, OF CHAPTER 7, AND BY ENACTING A NEW DIVISION 5 OF PART VI, SECTIONS 7-150 THROUGH 7-158, REGARDING SMOKING REGULATIONS

WHEREAS, it is the intent of the City of Stockton, in enacting this ordinance, to provide for the public health, safety, and welfare by discouraging and limiting smoking around non-smokers; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

SECTION I. AMENDMENT OF CODE.

Chapter 7, Division 5 of Part VI, sections 7-150 through 7-162, of the Stockton Municipal Code is hereby repealed.

SECTION II. AMENDMENT OF CODE.

Chapter 7, Division 5 of Part VI, sections 7-150 through 7-158, is hereby added to the Stockton Municipal Code and shall read as follows:

SEC. 7-150. TITLE:

This Division shall be known as the Smoking Control Ordinance.

SEC. 7-151. FINDINGS AND PURPOSE:

The City Council of Stockton hereby finds that:

Studies have shown that breathing second-hand smoke is a significant health hazard; and

Exposure to second-hand smoke is the third leading cause of preventable death in this country; and

State law acknowledges the harms of second-hand smoke by prohibiting smoking inside an enclosed place of employment, with certain exceptions; and

State law further prohibits smoking within twenty feet of the main entrances and exits of public buildings while expressly authorizing local communities to enact additional restrictions.

SEC. 7-152. DEFINITIONS:

The following words and phrases, whenever used in this Division, shall be construed as defined in this Section:

1. "Bar" means an enclosed area, which is devoted to the serving of alcoholic beverages and in which the serving of food, if any, is merely incidental to the consumption of such beverages.

2. "Business" means any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

3. "Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit and any person who performs volunteer services for a nonprofit entity.

4. "Employer" means any person, partnership, corporation, or nonprofit entity, including a municipal corporation, who employs the paid or volunteer services of one or more persons.

5. "Enclosed Area" means all space between a floor and a ceiling which is enclosed on all sides by solid walls, or windows, or doors, which extend from the floor to the ceiling, including all space therein screened by partitions, which do not extend to the ceiling or are not solid. For purposes of this Division, the term "enclosed" or "enclosed facilities" shall refer to an "enclosed area."

6. "Mall" means those areas of enclosed shopping centers or retail areas that are external to the retail stores and are used by customers as a route of travel from store to store and consist primarily of walkways and seating arrangements.

7. "Place of Employment" means any enclosed area under the control of a public or private employer normally frequented by employees during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and class rooms, libraries, cafeterias, hallways, and employer-furnished motor vehicles.

8. "Service Line" means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

9. "Restaurant" means any coffee shop, cafeteria, sandwich stand, soda fountain, private or public school cafeteria, and any other eating establishment, organization, club, boardinghouse or guesthouse which gives or offers food for sale to the public, guests, patrons or employees, except that the term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a "bar" as defined in Section 7-152(1).

10. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible organic or chemical substance, the smoke from which is specifically designed or intended to be inhaled or drawn into the nose or mouth.

SEC. 7-153. REGULATION OF SMOKING IN PUBLIC PLACES:

A. Smoking shall be prohibited in the following enclosed public places and un-enclosed public places within the City of Stockton, including, but not limited to:

1. Smoking shall be prohibited within twenty (20) feet of any entrance, exit, or air intake vent to any building that is open to the public where smoking is prohibited, except while passing on the way to another destination. Ashtrays or any receptacle used to dispose of burning tobacco products shall be prohibited within twenty (20) feet of any entrance, exit, or intake vent where smoking is prohibited.

EXCEPTION FOR RESTAURANTS AND BARS: Restaurants may allow smoking in an outdoor seating area, provided that the smoking area is clearly marked with signs and located the furthest reasonable distance from the entrance so as to minimize the chance of smoke entering the restaurant. One-hundred percent (100%) of the outdoor seating sections of bars may allow smoking, provided that reasonable efforts are made to minimize the chance of smoke entering the bar.

2. Elevators.

3. Buses, taxicabs, and other means of public transit; and ticket, boarding, and waiting areas of public transit depots, shelters, or stands.

4. Service lines.

5. Retail stores.

6. Retail food marketing establishments, including grocery stores and supermarkets.

7. Galleries, aquariums, libraries, and museums.

8. Within any area or facility, enclosed or not, which is primarily used for, or designed for, the primary purpose of exhibiting any motion picture, stage play, drama, lecture, musical recital or other similar performance, including the lobby, foyer, and concession stand areas thereof. To the extent that the act of smoking forms part of dramatic live stage production, this Division shall not be construed so as to prohibit the smoking of non-tobacco products "stage cigarettes" or similar materials in the form of cigars or pipes

9. The sites for public events including, but not limited to, for example, sports events, entertainment, speaking performances, ceremonies, pageants, and fairs, provided

however that this prohibition shall not prevent the establishment of a separate, designated smoking area set apart from the primary event area and no larger.

10. Every room, chamber, and place of indoor meeting or indoor public assembly.
11. Waiting rooms, hallways, wards, and patient rooms, and customer service areas of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.
12. Polling places.
13. Public restrooms.
14. Enclosed malls or shopping centers.
15. Areas that share the same air conditioning, heating, or other ventilation systems with other areas in which smoking is prohibited.
16. Any other area designated as a "No Smoking" area and posted with "No Smoking" signs by the owner or manager thereof.

B. Notwithstanding any other provision of this Section, any owner, operator, manager, or other person who controls any establishment described herein may declare the entire establishment as a nonsmoking establishment.

SEC. 7-154. POSTING OF SIGNS:

"Smoking" or "No Smoking" signs, whichever are appropriate, with letters of not less than one inch (1") in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently, and conspicuously posted in every building or other place where smoking is regulated by this Division, by the owner, operator, manager, or other person having control of such building or other place.

SEC. 7-155. VIOLATIONS AND PENALTIES:

It shall be unlawful for any person who owns, manages, operates, or otherwise controls the use of any premises subject to regulation under this Division to permit smoking that is in violation of this Division.

A violation of this Division shall constitute a misdemeanor. Notwithstanding the foregoing, a violation of this Division is an infraction when the prosecutor files a complaint charging the offense as an infraction.

SEC. 7-156. NON-RETALIATION:

It is hereby declared to be a violation of public policy for any person or employer to discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment, because such employee or applicant seeks compliance with this Division or reports a violation of this Division.

SEC. 7-157. OTHER APPLICABLE LAWS:

This Division shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

SEC. 7-158. SEVERABILITY:

If any provision, clause, sentence, or paragraph of this Division or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other

provisions of this Division, which can be given effect without the invalid provision or application, and to this end the provisions of this Division are declared to be severable.

SECTION III. EFFECTIVE DATE.

This ordinance shall take effect and be in full force thirty (30) days after its passage.

ADOPTED:

EFFECTIVE:

ATTEST:

GARY A. PODESTO
Mayor of the City of Stockton

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton

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